

In This Chapter...

7.1	Importance of Personal Protection Orders in Domestic Relations Actions	177
7.2	Domestic Relationship Personal Protection Orders	180
7.3	Non-domestic Stalking Personal Protection Orders	184
7.4	Procedures for Issuing PPOs	188
7.5	Motion to Modify, Terminate or Extend a PPO	194
7.6	Enforcing a PPO—Overview of Sanctions and Procedures	197
7.7	Initiating Criminal Contempt Proceedings by Warrantless Arrest	198
7.8	Pretrial Proceedings After Warrantless Arrest ...	201
7.9	Pretrial Procedures Where There Has Been No Arrest for an Alleged PPO Violation	203
7.10	Hearing on the Contempt Charges	204
7.11	Comparing Personal Protection Orders with Domestic Relations Orders	205
7.12	PPOs and Access to Children	209
7.13	PPOs and the Established Custodial Environment	212



This chapter offers the reader a brief overview of the law governing personal protection orders and discusses questions that frequently arise when concurrent PPO and domestic relations actions are pending between the same parties.

7.1 Importance of Personal Protection Orders in Domestic Relations Actions

All 50 states and most Indian tribes in the United States authorize their courts to issue civil orders protecting citizens from domestic violence. In Michigan, such orders — known as “personal protection orders” (“PPOs”) — can be obtained to restrain:

- ♦ Acts of violence against an intimate partner, MCL 600.2950 (the “domestic relationship PPO”) and;
- ♦ Acts of stalking, regardless of the relationship between the offender and the person seeking protection, MCL 600.2950a (the “non-domestic stalking PPO”).

The foregoing statutes authorize the family division of circuit court to issue a PPO in response to a petition from the person seeking protection. To protect those who are in immediate danger from domestic abuse or stalking, a PPO is

readily obtained ex parte. It goes into effect immediately upon signature by a judge and is immediately sent to a designated law enforcement agency for entry into the Law Enforcement Information Network (“LEIN”). Once a respondent age 17 or older has been served with or given oral notice of a PPO, he or she is subject to warrantless arrest upon a violation of the order, and if convicted of criminal contempt, may be sentenced to up to 93 days in jail. Additionally, the court may impose a maximum \$500.00 fine. Respondents under age 17 who violate a PPO are subject to immediate apprehension and to the dispositional alternatives listed in MCL 712A.18.

*Hart, *State Codes on Domestic Violence*, p 5–22 (Nat’l Council of Juvenile & Family Court Judges, 1992).

The general features of Michigan’s PPO statutes are similar to those of protection order statutes in other jurisdictions. To protect persons in emergency situations, for example, most states give their courts broad authority to award ex parte relief upon a showing of immediate danger or irreparable injury. Moreover, as part of a consistent national policy to treat domestic violence as a crime, most states provide for criminal enforcement measures against those who violate civil protection orders. A 1992 survey of state statutes governing civil protection orders reported that 18 states mandated warrantless arrest upon probable cause to believe the restrained party had violated the protection order. Twenty-three states, including Michigan, authorized warrantless arrest under those circumstances. In 21 jurisdictions, including Michigan, violation was subject to criminal contempt sanctions. In 35 states, violation of a civil protection order constituted a misdemeanor; in many of these states, contempt was an alternative charge that could be brought against the violator.*

An understanding of PPOs (and civil protection orders generally) is important for Friend of the Court personnel for a number of reasons:

♦ **A domestic relations court is authorized to issue PPOs to promote safety.**

**Civil Protection Orders: The Benefits & Limitations for Victims of Domestic Violence*, p i-xi (Nat’l Center for State Courts, 1997).

MCR 3.207(A) provides that a circuit court in a domestic relations case may issue both “ex parte and temporary orders with regard to any matter within its jurisdiction” and “[personal protection] orders against domestic violence.” In a study of the effectiveness of civil protection orders, the National Center for State Courts (“NCSC”) found that such orders are effective to deter domestic abuse, particularly when linked with accessible court processes, and public and private support services.* After interviewing women who received protection orders in the Family Court in Wilmington, Delaware, the County Court in Denver, Colorado, and the District of Columbia Superior Court, the NCSC study reported the following findings:

**Id.* at p 47–48.

- **Civil protection orders assisted petitioners in regaining a sense of well-being.** Approximately one month after receiving a civil protection order, three-quarters of the study participants reported that the order had a positive effect on their sense of well-being. After six months, the proportion of participants reporting life improvement increased to 85%. Ninety-five percent of study participants stated that they would seek a protection order again if necessary.*

- **In a majority of cases, civil protection orders deterred repeated incidents of physical and psychological abuse.** Slightly more than 72% of the study participants reported no violation of their protection orders within the first month after issuance. Slightly more than 65% of participants reported no violation within six months after issuance.*

**Id.* at p 48–49.

♦ **PPOs affect child custody.**

In enacting the PPO statutes, the Michigan Legislature did not make express provision for the court to address child custody or parenting time in a PPO. However, the Legislature did authorize Michigan courts to issue PPOs that prohibit contact with or restrain entry onto the premises of the protected individual. Although such orders do not expressly regulate child custody or parenting time, they can, as a practical matter, affect the parental rights of the parties to the PPO petition for the duration of the order and thus have an impact on domestic relations proceedings occurring concurrently with or after the PPO action.

Note: In some jurisdictions outside Michigan, courts have explicit statutory authority to make provision for emergency support and custody within a civil protection order. For discussion of the Michigan courts' obligation to extend full faith and credit to such provisions, see Lovik, *Domestic Violence: A Guide to Civil and Criminal Proceedings* (3d ed) (MJJ, 2004), Section 9.12(B).

♦ **PPOs can provide information about the parties to a domestic relations action.**

The PPO petition and order may contain information about the parties' circumstances that will be critical to promoting a safe environment in a subsequent or concurrent domestic relations action. The PPO petition will provide information about the scope and nature of past abuse. The PPO itself will contain court-imposed restrictions on the parties' interactions with one another. For this reason, the Legislature has enacted a provision requiring the clerk of the court that issues a PPO to notify the Friend of the Court about the existence of the PPO under certain circumstances. See MCL 600.2950(15)(f) and MCL 600.2950a(12)(f), cited in Section 2.11.

♦ **PPOs are part of the court's repertoire of responses to domestic abuse.**

The NCSC study also found that in responding to domestic abuse, a combination of civil and criminal remedies may be most effective, especially if the perpetrator has a criminal history.* Study participants reported a greater number of problems with their protection orders in cases where the restrained party had a prior criminal history. Nonetheless, these same participants were more likely to report an improved sense of well-being after issuance of the civil protection order. The authors of the study suggest that these findings show the need for both civil and criminal intervention in cases where an abuser has a history of violent crime. Additionally, the authors noted that safety planning for the victim is likely

*Nat'l Center for State Courts, *supra*, p 56–58.

to play a role in the effectiveness of protection orders and other interventions to deter domestic violence.

♦ **Coordination between concurrent PPO and domestic relations actions is essential to promote safety and accountability.**

It is critically important that domestic relations courts take steps to obtain information about the existence of PPOs between the parties before them. Courts that are unaware of the existence of a PPO may inadvertently orchestrate dangerous encounters. For example, a court may unwittingly order parties to appear together for a conciliation or settlement conference despite the existence of a PPO that prohibits contact between them. A lack of information about other court proceedings can also lead to conflicting orders. Conflicting orders in PPO and domestic relations actions cause confusion for the parties and for law enforcement officers. Where confusion exists, abusers find opportunity for manipulation and harassment. Conflicting court orders may also prevent law enforcement officers from adequately assessing the danger that is present at the scene of a domestic violence call.

*Finn & Colson, *Civil Protection Orders: Legislation, Current Court Practice, & Enforcement*, p 1–3 (Nat'l Inst of Justice, 1990). See Section 1.3 on the escalation of violence over time.

Note: Some researchers have pointed out that a civil protection order can be particularly useful in situations where criminal prosecution is not practicable. Such situations may involve abusive behavior that is not criminal but nonetheless serious in its long-range potential for harm. Keeping in mind that domestic violence often tends to escalate in severity and frequency over time, a court can issue a civil protection order in the early stages of a violent relationship to address non-criminal abusive behavior before it escalates to the point of serious injury. A civil protection order may also be a useful alternative when the abuse involves misdemeanor conduct (e.g., threats or shoving), and sufficient evidence to prosecute is lacking. In both of these cases, a civil protection order can offer protection to the victim and send the abuser a message that the court and society will not tolerate violent behavior.*

To assist Friend of the Court personnel in understanding the impact of PPOs on domestic relations cases, the rest of this chapter will provide information about the nature of each type of PPO and the procedures for issuance and enforcement of a PPO. The chapter will also address concerns that frequently arise in cases with concurrent PPO and domestic relations orders.

7.2 Domestic Relationship Personal Protection Orders

The Legislature has created two types of personal protection orders, distinguished by the categories of persons who may be restrained:

- ♦ “Domestic relationship PPOs” under MCL 600.2950 are available to restrain behavior (including stalking) that interferes with the petitioner’s personal liberty or that causes a reasonable apprehension

of violence, if the respondent is involved in certain domestic relationships with the petitioner as defined by the statute.

- ♦ “Non-domestic stalking PPOs” under MCL 600.2950a are available to enjoin stalking behavior by any person, regardless of that person’s relationship with the petitioner.

This section generally describes the requirements for issuing domestic relationship PPOs. The requirements for issuing non-domestic stalking PPOs are discussed in Section 7.3. The procedures for issuing both types of PPOs are the subject of Section 7.4.

A. Persons Who May Be Restrained

If the respondent falls into any one of the following categories described in MCL 600.2950(1), a domestic relationship PPO is appropriate (even if the offensive behavior amounts to stalking):

- ♦ The petitioner’s spouse or former spouse.
- ♦ A person with whom the petitioner has had a child in common.
- ♦ A person who resides *or* who has resided in the same household as the petitioner.
- ♦ A person with whom the petitioner has *or* has had a “dating relationship.”

The statute puts no time limitation on the foregoing domestic relationships that have occurred in the petitioner’s past.

“Dating relationship” is defined in the statute as: “frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.” MCL 600.2950(30)(a).

A domestic relationship PPO may not be issued if the petitioner and respondent have a parent/child relationship and the child is an unemancipated minor. MCL 600.2950(27)(a)-(b). If there is no parent/child relationship, however, a person under age 18 may be a party to the PPO action. MCR 3.703(F)(1) provides that if a petitioner is a minor or legally incapacitated, the petitioner “shall proceed through a next friend.” A PPO may not be issued if the respondent is less than ten years of age. MCL 600.2950(27)(c).*

The court may not issue mutual personal protection orders. However, correlative separate orders are permitted if both parties properly petition the court, and the court makes separate findings that support an order against each party. MCL 600.2950(8) and MCR 3.706(B). The court has no authority under the Michigan PPO statutes to accept the parties’ stipulation to a mutual protection order.

*A discussion of PPOs with a minor respondent is beyond the scope of this resource book.

B. Prohibited Conduct

Many of the restraints that the court may impose in a PPO are of great significance in a concurrent or subsequent domestic relations action. Under MCL 600.2950(1)(a)–(j), a domestic relationship PPO may enjoin one or more of the following acts:

“(a) Entering onto premises.

“(b) Assaulting, attacking, beating, molesting, or wounding a named person.

“(c) Threatening to kill or physically injure a named individual.*

“(d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.

“(e) Purchasing or possessing a firearm.

“(f) Interfering with petitioner’s efforts to remove petitioner’s children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.

“(g) Interfering with petitioner at petitioner’s place of employment or education or engaging in conduct that impairs the petitioner’s employment or educational relationship or environment.

“(h) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner’s minor child or about petitioner’s employment address.*

“(i) Engaging in conduct that is prohibited under . . . MCL 750.411h and 750.11i [i.e., stalking and aggravated stalking] Stalking. See Sections 7.3(B) and 8.4 for a definition of stalking behavior. (Orders restraining stalking may include a provision that the respondent have “no contact” with the petitioner. Such orders may affect court proceedings in which both parties are required to appear).

“(j) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.”

In *Brandt v Brandt*, 250 Mich App 68, 69 (2002), the trial court entered a PPO prohibiting the respondent from contacting his children. The trial court later modified the PPO to allow the respondent parenting time with his children. The respondent argued on appeal that the trial court did not have the authority to modify a PPO to include parenting time. The respondent asserted that custody and parenting time determinations may only be made in a child

*The named individual need not be the petitioner

*Note that restraints of this nature may have an impact on records management procedures in domestic relations actions. See Section 2.13(F) for more discussion.

custody proceeding after a court has examined the “best interests of the child” factors. The Court of Appeals upheld the trial court’s order, indicating that a trial court may restrain individuals from doing certain acts under MCL 600.2950(1). The Court further stated that MCL 600.1950(1)(j), the “catchall” provision, clearly provides a trial court with the authority to restrain a respondent from any action that “interferes with personal liberty” or might cause “a reasonable apprehension of violence.” 250 Mich App at 70. The Court stated:

“This statutory provision allows the trial court to restrain respondent from ‘any other specific act or conduct . . . that causes a reasonable apprehension of violence.’ [MCL 600.2950(1)(j)]. There is no question that it would be reasonable for petitioner to fear that respondent might become violent with petitioner if she were forced to permit respondent to visit the children or exchange the children for parenting time. Additionally, this interpretation is entirely consistent with the remainder, of the statute, which makes it clear that the Legislature recognized that access to the children may need to be restrained to protect the safety of a parent. See MCL 600.2950(1)(d), (f), and (h).” 250 Mich App at 70-71.

The respondent also argued that there was no statutory basis to restrain his contact with his children because the petitioner did not allege that the respondent was violent towards the children. The Court of Appeals disagreed, finding that the petitioner did not need to allege that the respondent was physically violent towards the children. The petitioner’s allegations that the respondent was physically violent toward her while in the children’s presence and was becoming increasingly more violent provided a sufficient basis for the trial court to enter an order that included prohibiting contact with the children. 250 Mich App at 71.

C. Standard for Issuing a Domestic Relationship PPO

The burden of proof that a domestic relationship PPO should issue is on the petitioner because the court must make a positive finding of prohibited behavior by the respondent before issuing a PPO. *Kampf v Kampf*, 237 Mich App 377, 386 (1999).

MCL 600.2950(4) articulates the standard for issuing a domestic relationship PPO as follows:

“The court *shall* issue a personal protection order under this section if the court determines that there is *reasonable cause* to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in [MCL 600.2950(1)].* In determining whether reasonable cause exists, the court shall consider all of the following:

“(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

*These acts are listed in Section 7.2 (B).

“(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in [MCL 600.2950(1)].” [Emphasis added.]

Under MCL 600.2950(6), the court may not refuse to issue a PPO solely due to the absence of:

- ♦ A police report;
- ♦ A medical report;
- ♦ An administrative agency’s finding or report; or
- ♦ Physical signs of abuse or violence.

MCL 600.2950(12) sets forth the following standard for cases in which the petition requests an ex parte PPO:

“An ex parte personal protection order shall be issued and effective without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.”

7.3 Non-domestic Stalking Personal Protection Orders

The Legislature has created two types of personal protection orders, distinguished by the categories of persons who may be restrained:

- ♦ “Non-domestic stalking PPOs” under MCL 600.2950a are available to enjoin stalking behavior by any person, regardless of that person’s relationship with the petitioner.
- ♦ “Domestic relationship PPOs” under MCL 600.2950 are available to enjoin behavior (including stalking) that interferes with the petitioner’s personal liberty, or that causes a reasonable apprehension of violence if the respondent is involved in certain domestic relationships with the petitioner as defined by the statute.

This section addresses the requirements for issuing non-domestic stalking PPOs. The requirements for issuing domestic relationship PPOs are discussed in Section 7.2. Procedures for issuing both types of PPOs are addressed in Section 7.4.

Note: In an appeal taken from *Staley v Jones*, 108 F Supp 2d 777 (WD Mich, 2000), the U.S. Court of Appeals for the Sixth Circuit considered the constitutionality of Michigan’s criminal aggravated stalking statute, MCL 750.411i. The U.S. District Court ruled that the statute is unconstitutionally overbroad, in that

it potentially criminalizes conduct protected by the First Amendment. On appeal, the U.S. Court of Appeals for the Sixth Circuit determined that the stalking statute was not unconstitutionally overbroad because a “person of reasonable intelligence” would not need to guess at the meaning of the statute and its application.

A. Persons Who May Be Restrained

MCL 600.2950a authorizes the family division of circuit court to issue a PPO restraining stalking as defined in MCL 750.411h, or aggravated stalking as defined in MCL 750.411i. This relief is available without the need to establish a prior relationship between the petitioner and the respondent. A non-domestic stalking PPO is thus available to restrain *anyone* ten years of age or older who is stalking, including a stranger to the petitioner. See MCL 600.2950(27)(c).

The court may not issue mutual personal protection orders. However, correlative separate orders are permitted if both parties properly petition the court and the court makes separate findings that support an order against each party. MCL 600.2950a(5) and MCR 3.706(B). The court has no authority under the Michigan PPO statutes to accept the parties’ stipulation to a mutual protection order.

A non-domestic stalking PPO may not be issued if the petitioner and respondent have a parent/child relationship and the child is an unemancipated minor. MCL 600.2950a(25)(a)-(b). If there is no parent/child relationship, however, a person under age 18 may be a party to a PPO action. A non-domestic stalking PPO may not be issued against a respondent under the age of ten. MCL 600.2950(25)(c). MCR 3.703(F)(1) provides that if a petitioner is a minor or legally incapacitated, the petitioner “shall proceed through a next friend.”

B. Prohibited Conduct — Stalking and Aggravated Stalking

MCL 600.2950a permits the family division of circuit court to restrain **stalking** and **aggravated stalking** as defined in the criminal stalking statutes.

“**Stalking**” is a misdemeanor under MCL 750.411h. Subsection (1)(d) of this statute defines “stalking” as:

- ♦ “[A] willful course of conduct involving repeated or continuing harassment of another individual”;
- ♦ “[T]hat would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested”; and
- ♦ “[T]hat actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.”

The following definitions further explain this offense:

- ♦ A “**course of conduct**” means “a pattern of conduct composed of a series of 2 or more separate, non-continuous acts evidencing a continuity of purpose.” MCL 750.411h(1)(a).
- ♦ “**Harassment**” means conduct including, but not limited to, “repeated or continuing unconsented contact, that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct serving a legitimate purpose.” MCL 750.411h(1)(c).
- ♦ Under MCL 750.411h(1)(e), “**unconsented contact**” means “any contact with another individual that is initiated or continued without that individual’s consent or in disregard of that individual’s expressed desire that the contact be avoided or discontinued.” Unconsented contact includes, but is not limited to:
 - Following or appearing within the victim’s sight.
 - Approaching or confronting the victim in a public place or on private property.
 - Appearing at the victim’s workplace or residence.
 - Entering onto or remaining on property owned, leased, or occupied by the victim.
 - Contacting the victim by phone, mail, or electronic communications.
 - Placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.
- ♦ “**Emotional distress**” means “significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.” MCL 750.411h(1)(b).

In *Pobursky v Gee*, 249 Mich App 44 (2001), the Court of Appeals found a single unwanted contact that included a threat and an assault did not amount to stalking and therefore the non-domestic stalking PPO should not have been entered. The petitioner obtained a PPO on the ground that the respondent had attacked him. The attack consisted of the respondent hurling the petitioner over a bench and into a wall, where the respondent proceeded to choke and threaten to kill the petitioner. 249 Mich App at 45. The respondent moved to terminate the order, arguing that the petition was insufficient to justify entry of a PPO because it alleged a single unwanted contact that did not constitute stalking. The trial court denied the motion to terminate the order. The Court of Appeals reversed the denial of the motion. 249 Mich App at 48. The Court of Appeals turned to the definition of stalking in MCL 750.411h(2), which provides, in part, that stalking is a “willful course of conduct involving repeated or continuing harassment of another individual” The Court of Appeals noted that “course of conduct” is defined as “a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.” The Court held that “two or more separate noncontinuous acts are acts distinct from one another that are not connected in time and space.” 249 Mich App at 47. The Court concluded that although the petitioner alleged a series of acts evidencing a continuity of purpose, the

acts were not separate and noncontinuous and therefore they did not meet the definition provided under the stalking statute. 249 Mich App at 48.

Under MCL 750.411i(2)(a)-(d), a person who engages in stalking is guilty of the felony of **aggravated stalking** if the violation involves any of the following circumstances:

- ♦ At least one of the actions constituting the offense is in violation of a restraining order of which the offender has actual notice, or at least one of the actions is in violation of an injunction or preliminary injunction. There is no language in the aggravated stalking statute stating that the order violated must have been issued by a Michigan court; violations of other state or tribal protection orders may also be considered regarding aggravated stalking.
- ♦ At least one of the actions constituting the offense is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal.
- ♦ The person's conduct includes making one or more credible threats against the victim, a family member of the victim, or another person living in the victim's household. Under MCL 750.411i(1)(b), a "credible threat" is a "threat to kill another individual or to threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual."
- ♦ The offender has been previously convicted of violating either of the criminal stalking statutes.

In addition to conduct prohibited under the criminal stalking and aggravated stalking statutes, a non-domestic stalking PPO may enjoin an individual from purchasing or possessing a firearm. MCL 600.2950a(23).

C. Standard for Issuing a Non-Domestic Stalking PPO

Relief under the non-domestic stalking PPO statute shall *not* be granted *unless*:

"the petition alleges facts that constitute stalking as defined in . . . MCL 750.411h and 750.411i. Relief may be sought and granted under this section whether or not the individual to be restrained or enjoined has been charged or convicted under . . . MCL 750.411h and 750.411i, for the alleged violation." MCL 600.2950a(1).

MCL 600.2950a(9) sets forth the following standard for cases in which the petition requests an ex parte PPO:

*See also MCR 3.703(G), which contains similar language.

“An ex parte personal protection order shall not be issued and effective without written or oral notice to the individual enjoined or his or her attorney unless it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.”*

7.4 Procedures for Issuing PPOs

This section briefly describes the procedural requirements for issuing both domestic relationship PPOs under MCL 600.2950 and non-domestic stalking PPOs under MCL 600.2950a.

A. Filing Requirements

*See MCL 600.1021(1)(k) (adult respondent) and MCL 712A.2(h) (minor respondent).

The family division of circuit court issues PPOs.* Under MCR 3.207(A), the court in a domestic relations case is authorized to issue PPOs against domestic violence.

Under MCR 3.703(A), a petition for a PPO must be filed as an independent action. See MCR 3.702(2). Treatment of the PPO petition as a separate action protects the petitioner by ensuring that the PPO will not automatically terminate upon conclusion of the separate matter in which it would otherwise have been filed or joined under the statutes.

*MCR 1.104. The abrogated provisions appear at MCL 600.2950(1), MCL 600.2950a(1), and MCL 552.14.

Note: Because court rules supersede procedural rules set forth in statute, MCR 3.703(A) abrogates statutory provisions that would permit a PPO petition to be joined as a claim with another action or filed as a motion in a pending action.*

Courts may provide domestic violence victim advocates to assist petitioners in obtaining a PPO. Advocates may not represent or advocate for domestic violence victims in court but may provide a variety of other types of assistance. See MCL 600.916, 600.2950b(5) (immunity provision), and MCL 600.2950c (examples of permissible assistance). More information on the types of assistance provided by domestic violence service agencies appears at Section 3.2(B).

1. Venue

In cases with a respondent age 18 or older, venue to issue a PPO lies in any county in Michigan, regardless of the parties’ residency. MCR 3.703(E)(1). This broad venue provision protects petitioners who have fled from their places of residence to escape violence.

In cases where the respondent is under age 18, venue is proper in the county of residence of either the petitioner or respondent. If the respondent does not live in Michigan, venue for the initial action is proper in the petitioner’s county of residence. MCL 712A.2(h) and MCR 3.703(E)(2).

2. Filing Fee

There is no fee for filing a PPO petition, and no summons is issued. MCL 600.2529(1)(a) and MCR 3.703(A).

3. Distributing and Completing Forms

Pursuant to MCL 600.2950b and MCR 3.701(B), the State Court Administrative Office has approved standardized PPO forms. These forms are intended for use by parties who wish to proceed without an attorney. Regarding distribution of the forms, MCL 600.2950b(4) provides as follows:

“The court shall provide a form prepared under this section without charge. Upon request, the court may provide assistance, but not legal assistance, to an individual in completing a form prepared under this section and the personal protection order form if the court issues such an order, and may instruct the individual regarding the requirements for proper service of the order.”

MCR 3.701(B) similarly provides that PPO forms approved by the State Court Administrative Office “shall be made available for public distribution by the clerk of the circuit court.”

4. Contents of the Petition—Other Court Orders or Judgments

MCR 3.703(B) and (D) address the contents of the petition. Under MCR 3.703(B), the petition must:

- “(1) be in writing;
- “(2) state with particularity the facts on which it is based;
- “(3) state the relief sought and the conduct to be restrained;
- “(4) state whether an ex parte order is being sought;
- “(5) state whether a personal protection order action involving the same parties has been commenced in another jurisdiction; and
- “(6) be signed by the party or attorney as provided in MCR 2.114. The petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address.”

MCR 3.703(D)(1) is of particular interest to courts handling domestic relations cases. This rule requires the petitioner to specify whether “there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known.” *Id.* If there are other such orders or judgments, the following provisions apply:

“(a) If the petition is filed in the same court as a pending action or where an order or judgment has already been entered by that court affecting the parties, it shall be assigned to the same judge.

“(b) If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court should contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.” MCR 3.703(D)(1)(a)–(b).

MCR 3.703(D)(2) provides that if a prior court action resulted in an order providing for continuing jurisdiction of a minor, and the petition requests relief with regard to the minor, the court considering the PPO petition must comply with the notice requirements of MCR 3.205.

The petitioner need not list his or her residence address on documents filed with the court. However, the petitioner must provide the court with a mailing address. MCL 600.2950(3), MCL 600.2950a(3), and MCR 3.703(B)(6).

B. Ex Parte Proceedings

The court must rule on a request for an ex parte PPO within 24 hours of the filing of the petition. MCR 3.705(A)(1).

Note: The standard for issuing an ex parte PPO differs depending on whether the PPO is a domestic relationship PPO or a non-domestic stalking PPO. See Sections 7.2 and 7.3.

If the court issues an ex parte PPO, MCR 3.705(A)(2) requires that “[a] permanent record or memorandum must be made of any nonwritten evidence, argument or other representations made in support of issuance of an ex parte order.” The court has some flexibility in making this record or memorandum. Some judges require the petitioner to appear on the record before the court, while others consider only the allegations in the petition.

“In a proceeding under MCL 600.2950a, the court must state in writing and, if a hearing is held, on the record, the specific reasons for issuance of the order.” *Id.* MCL 600.2950a(4) also requires the court to immediately state in writing the specific reasons for issuing a non-domestic stalking PPO. Specifically, this section provides:

“If a court refuses to grant a personal protection order, the court shall immediately state in writing the specific reasons for issuing or refusing to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a personal protection order.” [Emphasis added.]

Note: MCL 600.2950a(4) begins with the qualifying phrase, “If a court refuses to grant a personal protection order,” and then requires a court to state the reasons for issuing or denying a personal protection order. Although

the statute has contradictory language, the recommended procedure when issuing or denying a non-domestic stalking PPO is to state in writing and, if a hearing is held, on the record the specific reasons for issuing or denying a PPO. The requirement to state the reasons for issuing a PPO does not apply to domestic relationship PPOs. See MCL 600.2950(7).

If the court denies the petition for ex parte relief, it must:

- ♦ Immediately state specific reasons in writing. MCL 600.2950(7), MCL 600.2950a(4), and MCR 3.705(A)(5).
- ♦ Advise the petitioner of the right to request a hearing. The court is excused from giving this advice if it “determines after interviewing the petitioner that the petitioner’s claims are sufficiently without merit that the action should be dismissed without a hearing.” MCR 3.705(A)(5).
- ♦ Schedule a hearing as soon as possible if the petitioner requests one. MCR 3.705(B)(1)(b). If the petitioner does not request a hearing within 21 days of entry of the court’s order denying the request for an ex parte PPO, the court’s order is final. MCR 3.705(A)(5). The court does not have to schedule a hearing if it “determines after interviewing the petitioner that the claims are sufficiently without merit that the action should be dismissed without a hearing.” MCR 3.705(B)(1).

C. Hearing Procedures

The court must hold any hearing on a PPO petition on the record. MCR 3.705(B)(3). At the conclusion of a hearing on a PPO petition, the court shall immediately state the reasons for granting or denying a personal protection order on the record and enter an appropriate order. In addition, the court shall immediately state its reasons for denying a personal protection order in writing. MCL 600.2950(7), MCL 600.2950a(4), and MCR 3.705(B)(6). If the petition sought a non-domestic relations stalking PPO, the court must immediately state in writing the specific reasons for issuing the PPO. MCL 600.2950a(4) and MCR 3.705(B)(6).

D. Issuance of a PPO—Procedures for Cases with Existing Custody or Parenting Time Orders

If there is an existing custody or parenting time order between the parties to a personal protection action, “[t]he court issuing a personal protection order must contact the court having jurisdiction over the parenting time or custody matter as provided in MCR 3.205, and where practicable, the judge should consult with that court, as contemplated in MCR 3.205(C)(2), regarding the impact upon custody and parenting time rights before issuing the personal protection order.” MCR 3.706(C)(1).

If the respondent’s custody or parenting time rights will be adversely affected by the PPO, the issuing court shall determine whether conditions should be specified in the PPO to accommodate the respondent’s rights or whether the

situation is such that the safety of the petitioner and minor children would be compromised by such conditions. MCR 3.706(C)(2).

A PPO takes precedence over any existing custody or parenting time order until the PPO has expired, or the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order to accommodate the conditions of the PPO. If a party to the personal protection action desires modification of the custody or parenting time order, the party must file a motion with the court having jurisdiction over the custody or parenting time order and request a hearing. The proceedings will be governed by subchapter 3.200 of the Michigan Court Rules. The hearing on the motion to modify the custody or parenting time order must be held within 21 days after the motion is filed. MCR 3.706(C)(3).

See Section 7.12 for further discussion of PPOs that affect prior custody or parenting time orders.

E. Other Required Provisions in a PPO

*MCR 3.706(A) provides similar requirements.

If the court grants a PPO petition restraining a respondent age 18 or older, MCL 600.2950(11) and MCL 600.2950a(8) require that the order contain the following information, in a single form “to the extent practicable:*

- ♦ A statement that the PPO has been entered to enjoin or restrain conducted listed in the order. MCL 600.2950(11)(a) and MCL 600.2950a(8)(a).
- ♦ A statement regarding the penalties for violation of a PPO. *Id.*
- ♦ A statement that the PPO is “effective and immediately enforceable anywhere in this state when signed by a judge, and that, upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.” MCL 600.2950(11)(b) and MCL 600.2950a(8)(b).
- ♦ A statement listing the type or types of conduct enjoined. MCL 600.2950(11)(c) and MCL 600.2950a(8)(c). See also MCR 3.706(A)(1).

Note: The prohibited acts listed in MCL 600.2950(1) and in the criminal stalking statutes are not automatically incorporated into every PPO; a PPO restrains the respondent only from doing the particular acts specified in the order.

- ♦ An expiration date stated clearly on the face of the order. MCL 600.2950(11)(d), MCL 600.2950a(8)(d), and MCR 3.706(A)(4).

Note: The statutes place no maximum limit on the duration of a PPO. **Ex parte orders must be valid for at least 182 days.** The statutes have no minimum time provision for the duration of orders entered after a hearing with notice to the respondent. MCL 600.2950(13) and MCL 600.2950a(10).

- ♦ A statement that the PPO is “enforceable anywhere in Michigan by any law enforcement agency.” MCL 600.2950(11)(e), MCL 600.2950a(8)(e), and MCR 3.706(A)(5).
- ♦ A statement that “[i]f the respondent violates the personal protection order in a jurisdiction other than this state, the respondent is subject to the enforcement procedures and penalties of the state, Indian tribe, or territory of the United States under whose jurisdiction the violation occurred.” MCL 600.2950(11)(a)(iii), MCL 600.2950a(8)(a)(iii), and MCR 3.706(A)(5).

Note: Once they have been served on the respondent, Michigan PPOs must also be enforced by tribal courts and the courts of other U.S. states under the Full Faith and Credit provision of 18 USC 2265.

- ♦ The name of the law enforcement agency that the court has designated for entering the PPO into the Law Enforcement Information Network (“LEIN”). MCL 600.2950(11)(f), MCL 600.2950a(8)(f), and MCR 3.706(A)(6).
- ♦ If the PPO was issued ex parte, a statement that the restrained person may move to modify or terminate it, and may request a hearing within 14 days after service or actual notice of the order.* The PPO must state that motion forms and filing instructions for this purpose are available from the court clerk. MCL 600.2950(11)(g), MCL 600.2950a(8)(g), and MCR 3.706(A)(7).

*An expedited hearing is provided for those who must carry a concealed weapon as a condition of employment. See Section 7.5.

F. Entry Into LEIN System

After issuance of a PPO, the clerk of the court has the following responsibilities to facilitate entry of the PPO and other related documents into the Law Enforcement Information Network (“LEIN”) system:

- ♦ Immediately upon issuance and without requiring proof of service, the court clerk must file a true copy of the PPO with the court-designated law enforcement agency that will enter it into the LEIN network. MCL 600.2950(15)(a) and MCL 600.2950a(12)(a).
- ♦ The court clerk must provide the petitioner with no less than two true copies of the PPO and inform the petitioner that he or she may take a copy to the designated law enforcement agency for entry into the LEIN network. MCL 600.2950(15)(b), (16) and MCL 600.2950a(12)(b), (13). The fact that the petitioner may take a copy of the PPO to a law enforcement agency for LEIN entry does *not* relieve the court clerk of the responsibility for doing so.
- ♦ The court clerk must notify the designated law enforcement agency upon receipt of proof of service on the restrained person. MCL 600.2950(19)(a) and MCL 600.2950a(16)(a).
- ♦ The court clerk must notify the designated law enforcement agency if the court terminates, modifies, or extends the PPO.* MCL 600.2950(19)(b) and MCL 600.2950a(16)(b).

*See Section 7.5 on termination and modification of a PPO.

G. Required Notices by the Court Clerk

In addition to notifying the designated law enforcement agency for purposes of LEIN entry, the clerk of the court that issue a PPO is required to make the following notices “immediately upon issuance and without requiring a proof of service on the individual restrained or enjoined,” pursuant to MCL 600.2950(15)(c)–(f) and MCL 600.2950a(12)(c)–(f):

“(c) If the respondent is identified in the pleadings as a law enforcement officer, notify the officer’s employing law enforcement agency, if known, about the existence of the personal protection order.

“(d) If the personal protection order prohibits respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent’s county of residence about the existence and contents of the personal protection order.

“(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the department of corrections about the existence of the personal protection order.

“(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the Friend of the court for the county in which the information is located about the existence of the personal protection order.”

7.5 Motion to Modify, Terminate or Extend a PPO

Modification or termination of a PPO is governed by the PPO statutes and by MCR 3.707. These authorities apply to:

- ♦ Domestic relationship and non-domestic stalking petitions, regardless of the age of the petitioner, and
- ♦ Actions with adult parties and parties under age 18.* However, parties who are minors or legally incapacitated individuals must proceed through a next friend. MCR 3.707(C). MCR 3.703(F) governs proceedings through a next friend.

A. Time and Place to File Motion

The following time lines apply to motions to modify, terminate or extend a PPO. There are no motion fees for filing any of these motions. MCL 600.2529(1)(e) and MCR 3.707(D).

*See MCR 3.981 on the applicability of subchapter 3.700 of the court rules to PPO’s involving a respondent under age 18.

1. Petitioner's Motion to Modify or Terminate the PPO

Under MCR 3.707(A)(1)(a), a petitioner may file a motion to modify or terminate a PPO and request a hearing at any time after the PPO is issued. Although an earlier version of MCR 3.707 required that a motion to modify or terminate a PPO had to be filed with the issuing court, the current version of MCR 3.707(A)(1)(a) does not specify where the motion must be filed.

2. Petitioner's Motion to Extend the PPO

Under MCR 3.707(B)(1), a petitioner may file an ex parte motion to extend the effectiveness of a PPO, without a hearing, by requesting a new expiration date. This motion must be filed with the court that issued the PPO no later than three days prior to the order's expiration date. Failure to timely file this motion does not preclude the petitioner from commencing a new PPO action regarding the same respondent.

The court must act on the petitioner's motion to extend the PPO within three days after it is filed. *Id.*

3. Respondent's Motion to Modify or Terminate the PPO

Under MCR 3.707(A)(1)(b), the respondent may file a motion to modify or terminate a PPO and request a hearing within 14 days after receipt of service or actual notice of the PPO. This 14-day period may be extended upon good cause shown.* Unlike an earlier version of MCR 3.707 that required that a motion to modify or terminate a PPO be filed with the issuing court, the current version of MCR 3.707(A)(1)(a) does not specify where the respondent's motion must be filed.

*See also MCL 600.2950(13) and MCL 600.2950a(1).

B. Time to Hold Hearings

Under MCR 3.707(A)(2), the court must schedule and hold a hearing on a motion to terminate or modify a PPO within 14 days of the filing of the motion.* However, the court must schedule the hearing within five days after the filing of the motion in cases where the PPO prohibits the respondent from purchasing or possessing a firearm *and* the respondent is licensed to carry a concealed weapon *and* is required to carry a weapon as a condition of his or her employment. MCL 600.2950(14) and MCL 600.2950a(11). Occupations included in these provisions are:

*MCL 600.2950(14) and MCL 600.2950a(11) contain similar provisions.

- ♦ A police officer certified under MCL 28.601–28.616;
- ♦ A sheriff;
- ♦ A deputy sheriff or a member of the Michigan Department of State Police;
- ♦ A local corrections officer;
- ♦ A Department of Corrections employee; or
- ♦ A federal law enforcement officer who carries a firearm during the normal course of his or her employment.

MCL 600.2950a(2) and (11) and MCL 600.2950(2) and (14).

A “federal law enforcement officer” means “an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.” MCL 600.2950(30)(b) and MCL 600.2950a(29)(a).

If the court extends, modifies, or rescinds a PPO, the clerk must immediately notify the designated law enforcement agency of the court’s order for entry into the Law Enforcement Information Network. MCL 600.2950(19)(b) and MCL 600.2950a(16)(b).

C. Burden of Proof

In *Pickering v Pickering*, 253 Mich App 694, 699 (2002), the Court of Appeals held that the burden of justifying the continuation of an ex parte PPO is on the petitioner. Because the PPO statute and court rules governing motions to rescind or terminate PPO’s are silent as to the burden of proof, MCR 3.310(B)(5) is controlling.

MCR 3.310(B)(5) provides, in part:

“At a hearing on a motion to dissolve a restraining order granted without notice, the burden of justifying continuation of the order is on the applicant for the restraining order whether on a motion for a preliminary injunction or an order to show cause.”

In *Pickering*, the Court of Appeals noted that the burden of proof has two aspects: the “burden of persuasion” and the “burden of going forward with evidence.” 253 Mich App at 698-99. In the context of a PPO granted ex parte, the “burden of persuasion” is the burden of justifying the continuation of the PPO. The “burden of persuasion” requires the petitioner to demonstrate that the PPO should continue because it is “just, right, or reasonable.” *Id.* at 699. The Court concluded that there was reasonable cause to justify the initial entry of the order and the respondent’s conduct was of a continuous nature. *Id.* at 700. Regarding the “burden of going forward with the evidence,” the Court stated in a footnote that “[a]lthough the trial court did not offend MCR 3.310(B)(5) by placing the burden of first coming forward with evidence on respondent, we believe it would be more appropriate in these hearings to have the petitioner—who has the burden of justification throughout the proceedings—to also be the party to first come forward with evidence.” *Id.* at 700, n 1.

7.6 Enforcing a PPO—Overview of Sanctions and Procedures

The Michigan Legislature has provided for enforcement of PPOs by way of the courts' contempt powers. Both the domestic relationship and non-domestic stalking PPO statutes authorize imposition of civil and criminal contempt sanctions upon conviction of a PPO violation. Criminal contempt sanctions are most commonly appropriate in cases involving assaultive or threatening behavior.*

Note: Under the Michigan Court Rules, a PPO is defined to include a “foreign protection order” enforceable in Michigan under MCL 600.2950/. MCR 3.708(A)(1) and MCR 3.982(A). A “foreign protection order” is:

“an injunction or other order issued by a court of another state, Indian tribe, or United States territory for the purpose of preventing a person’s violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. Foreign protection order includes temporary and final orders issued by civil and criminal courts (other than a support or child custody order issued pursuant to state divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other federal law), whether obtained by filing an independent action or by joining a claim to an action, if a civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.” MCL 600.2950h(a).

A “foreign protection order” does not include an order issued in another country.

The PPO statutes provide for criminal contempt sanctions as follows:

“An individual who is 17 years of age or more and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual who is less than 17 years of age and who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in MCL 712A.18” MCL 600.2950(23) and MCL 600.2950a(20). See also MCR 3.708(H)(5)(a) and MCR 3.988(D).

Note: Respondents under 17 years of age who violate a PPO are subject to the dispositional alternatives in the Juvenile Code.* MCL 600.2950(23) and MCL 600.2950a(20). Distinct enforcement proceedings apply to persons under age 18. A discussion of juvenile dispositional alternatives and of proceedings to enforce a

*For more on contempt sanctions, see Lovik, *Domestic Violence: A Guide to Civil & Criminal Proceedings* (3d ed) (MJJ, 2004), Chapter 9.

*See MCL 712A.18 on juvenile dispositional alternatives.

PPO involving a respondent under age 18 are beyond the scope of this resource book. See MCR 3.981–3.989 for enforcement procedures in these cases.

In addition to the foregoing statutory penalties, the court must order a person convicted of contempt to pay compensation for any injury caused by the violation. MCL 600.1721. Also, MCR 3.708(H)(5) provides that upon conviction of civil or criminal contempt, “the court may impose other conditions to the personal protection order.” MCR 3.988(D)(3) contains a similar provision applicable to PPO’s issued against respondents under age 18.

Under the PPO statutes and MCR 3.708, contempt proceedings against an adult 18 or older may be initiated in one of two ways:

- ♦ Criminal contempt proceedings may be initiated by **warrantless arrest** under MCL 764.15b. See also MCL 600.2950(25) and MCL 600.2950a(22).
- ♦ If the respondent has not been arrested for the alleged violation, the petitioner may initiate criminal contempt proceedings by way of a **motion to show cause**. MCR 3.708(B).

In either case, the prosecuting attorney is responsible to prosecute the criminal contempt proceeding, unless the petitioner retains his or her own attorney. The prosecuting attorney has discretion to decline to prosecute if he or she determines that the PPO was not violated or that it would not be in the interest of justice to do so. MCL 764.15b(7).

7.7 Initiating Criminal Contempt Proceedings by Warrantless Arrest

*State Police officers may also make warrantless arrests for PPO violations. MCL 28.6(5).

MCL 764.15b authorizes law enforcement officers to arrest an individual named in a PPO without a warrant upon reasonable cause to believe that the individual is violating or has violated the order.*

A PPO is effective and immediately enforceable upon a judge’s signature. An ex parte PPO is effective immediately, without written or oral notice to the respondent, and before entry into the LEIN system. MCL 600.2950(9), (12), (18) and MCL 600.2950a(6), (9), (15). In order for a PPO to be effective in another state, Indian tribal territory, or U.S. territory, a PPO must be served on the respondent. MCL 600.2950(9) and MCL 600.2950a(6).

Once in effect, a PPO is enforceable anywhere in Michigan, by any law enforcement officer that:

- ♦ has received a true copy of the PPO;
- ♦ is shown a copy of the PPO (i.e., by the victim) or;

- ♦ has verified the existence of the PPO on the LEIN network.*

A law enforcement officer shall enforce a PPO if any one of the foregoing conditions is met. For example, if the officer is shown a copy of the PPO, he or she must enforce it even if it has not been served on the respondent or entered into the LEIN system.

If a law enforcement officer is shown a copy of a foreign PPO but the officer can not verify the order on LEIN or the National Crime Information Center (“NCIC”) protection order file, the officer must still enforce the foreign PPO unless it is apparent that the order is invalid.* MCL 600.2950l(4). The law enforcement officer may rely upon the statement of the petitioner that the foreign protection order that has been shown to the officer remains in effect and may rely upon the statement of the petitioner or the respondent that the respondent has received notice of that order. *Id.*

If a law enforcement officer is presented with a copy of a foreign PPO, from any source, the officer may rely upon the copy of the foreign PPO if it appears to contain all of the following:

- “(a) The names of the parties.
 - “(b) The date the protection order was issued, which is prior to the date when enforcement is sought.
 - “(c) The terms and conditions against respondent.*
 - “(d) The name of the issuing court.
 - “(e) The signature of or on behalf of a judicial officer.
 - “(f) No obvious indication that the order is invalid, such as an expiration date that is before the date enforcement is sought.”
- MCL 600.2950l(3)(a)-(f).

If the person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, the law enforcement officer shall attempt to verify the existence of the foreign protection order and all of the following:

- “(a) The names of the parties.
- “(b) The date the foreign protection order was issued, which is prior to the date when enforcement is sought.
- “(c) Terms and conditions against respondent.
- “(d) The name of the issuing court.

*MCL
600.2950(21)
and MCL
600.2950a(18).

*A foreign protection order is valid if the issuing court had subject matter and personal jurisdiction and the respondent was given notice and an opportunity to be heard. See MCL 600.2950i(1)(a)-(b). The NCIC protection order file is maintained by the FBI. MCL 600.2950h.

*A foreign protection order must be enforced even though it contains provisions that are unavailable under Michigan’s PPO statutes.

“(e) No obvious indication that the foreign protection order is invalid, such as an expiration date that is before the date enforcement is sought.” MCL 600.2950/(5)(a)-(e).

Verification can be done through LEIN or the NCIC protection order file, administrative messaging, contacting the court that issued the foreign protection order, contacting the law enforcement agency in the issuing jurisdiction, contacting the issuing jurisdiction’s protection order registry or any other method the law enforcement officer believes to be reliable. MCL 600.2950/(5). If the existence of the order and information listed in 600.2950/(5)(a)-(e) is verified, the officer may enforce the order. If there is no copy of the order and no verification, the officer should maintain the peace and take appropriate action regarding criminal violations.

If the respondent has not been served with or received notice of a foreign PPO, the law enforcement officer must serve the respondent. MCL 600.2950/(9) states:

“If there is no evidence that the respondent has been served with or received notice of the foreign protection order, the law enforcement officer shall serve the respondent with a copy of the foreign protection order, or advise the respondent about the existence of the foreign protection order, the name of the issuing court, the specific conduct enjoined, the penalties for violating the order in this state, and, if the officer is aware of the penalties in the issuing jurisdiction, the penalties for violating the order in the issuing jurisdiction. The law officer shall enforce the foreign protection order and shall provide the petitioner, or cause the petitioner to be provided, with proof of service or proof of oral notice If there is no evidence that the respondent has received notice of the foreign protection order, the respondent shall be given an opportunity to comply with the foreign protection order before the officer makes a custodial arrest for violation of the foreign protection order. The failure to comply immediately with the foreign protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under . . . MCL 764.15 and 764.15a, or a proceeding under . . . MCL 712A.14.”

The officer must also provide the issuing court with a proof of service or proof of oral notice if the address of the issuing court is apparent on the face of the foreign protection order or otherwise is readily available to the officer. *Id.* MCL 600.2950/(9) also states:

“If the foreign protection order is entered into L.E.I.N. or the NCIC protection order file, the officer shall provide the L.E.I.N. or the NCIC protection order file entering agency, or cause the L.E.I.N. or NCIC protection order file entering agency to be provided, with a proof of service or proof of oral notice. ”

When enforcing a foreign PPO, the office must maintain the peace and take any appropriate action for violation of criminal law. MCL 600.2950/(8)

provides that “[t]he penalties provided for under [MCL 600.2950] and [MCL 600.2950a] and . . . MCL 712A.1 to 712A.32, may be imposed in addition to a penalty that may be imposed for any criminal offense arising from the same conduct.”

Once one of the foregoing conditions is met, MCL 764.15b and the PPO statutes authorize police to arrest without a warrant upon reasonable cause to believe that the respondent is violating or has violated the order, if the respondent has been given proper notice of the PPO. This notice can be given to the respondent in one of the following ways:

- ♦ Formal service;
- ♦ Service of a true copy of the order or oral advice about the order by a law enforcement officer or court clerk with knowledge of its existence at any time, as described in MCL 600.2950(18) and MCL 600.2950a(15) or;
- ♦ Serve of a true copy of the order or oral advice from a law enforcement officer responding to a call alleging a violation of the PPO, as described in MCL 600.2950(22) and MCL 600.2950a(19).

Oral notice given by court clerks or law enforcement officers under the foregoing provisions must inform the respondent of:

- ♦ The PPO’s existence;
- ♦ The specific conduct enjoined;
- ♦ The penalties for violating the PPO; and
- ♦ The place where the respondent may obtain a copy of the PPO.

A proof of service or oral notice must be filed with the clerk of the court that issued the PPO. MCL 600.2950(18), (22) and MCL 600.2950a(15), (19). See also MCR 3.706(E). In situations where a law enforcement officer gives notice while responding to a call alleging a PPO violation, the officer must also immediately enter or cause to be entered into the LEIN network that the respondent has actual notice of the PPO. MCL 600.2950(22) and MCL 600.2950a(19).

Regardless of whether they make an arrest, police officers must write an incident report whenever they investigate or intervene in a domestic violence incident (i.e., an incident involving an alleged PPO violation or a crime against an intimate partner.) The officers must also provide the victim in the incident with information about how to obtain this incident report. MCL 764.15c.*

*The reporting requirements of MCL 764.15c are discussed in Sections 2.10(B)(2) and 8.6.

7.8 Pretrial Proceedings After Warrantless Arrest

This section outlines the pretrial procedural requirements that apply after an individual age 18 or older has been arrested without a warrant for an alleged PPO violation. The discussion applies to domestic relationship, non-domestic stalking, and valid foreign PPOs.

*For information on “valid foreign PPOs” see Section 7.7.

A. Jurisdiction to Conduct Contempt Proceedings

The family division of circuit court in each county in Michigan has jurisdiction to conduct contempt proceedings for an alleged violation of a PPO issued by the circuit court of any other county in Michigan or a valid foreign PPO.* MCL 764.15b(5). An individual arrested without a warrant for the alleged violation of a PPO must be arraigned in family division of circuit court. The arraignment must take place in the county where the arrest was made, however:

“If the respondent is arrested for violation of a personal protection order as provided in MCL 764.15b(1), *the court in the county where the arrest is made shall proceed* as provided in MCL 764.15b(2)-(5), except as provided in this rule.” MCR 3.708(C)(1). [Emphasis added.]

If the respondent is arrested in a county other than the one in which the PPO was issued, the hearing on the charged PPO violation may take place in either the arraigning or the issuing court. The arraigning court shall notify the issuing court prior to the hearing on the charges, and the issuing court may request that the respondent be returned to its country. If the issuing court requests the respondent’s return, its county shall bear the cost of transporting the respondent. If the issuing court does not request the respondent’s return, the arraigning court must proceed to a hearing on the charges. MCL 764.15b(5) and MCR 3.708(C)(1).

The broad jurisdictional provisions of MCL 764.15b(5) and MCR 3.708(C)(1)-(2) protect victims who have fled from their places of residence to escape violence.

B. Time and Place for Arraignment

An individual arrested without a warrant for an alleged violation of a PPO must be arraigned in family division of circuit court. The arraignment must take place in the county where the arrest occurred, regardless of where the PPO was issued. MCR 3.708(C)(1). The individual must be brought before the circuit court for arraignment within 24 hours after arrest. MCL 764.15b(2). If a circuit judge is not available within 24 hours after arrest, the individual must be brought within that 24-hour period before the district court, which “shall set bond and order the respondent to appear for arraignment before the family division of the circuit court in that county.” MCR 3.708(C)(3). See also MCL 764.15b(3).

*See Section 8.7 for more about bonds with conditions for the protection of named individuals.

The court must set a reasonable bond within 24 hours after arrest pending a hearing of the alleged PPO violation. MCL 764.15b(2)(b) and MCR 3.708(D)(5). The bond must be set unless the court determines that release will not reasonably ensure the safety of the individuals named in the PPO. MCR 3.708(D)(5) and MCR 3.708(F)(1)(a). The court may impose a bond with conditions for the protection of a named individual in compliance with MCL 765.6b. MCR 3.708(F)(1)(b). A bond of this nature promotes safety of the individuals named in the PPO by providing for the warrantless arrest of an individual who violates it.*

Additionally, the circuit court must do the following at arraignment:

- ♦ Advise the respondent of the alleged violation. MCR 3.708(D)(1). This advice should inform the respondent of the possible penalties for criminal and/or civil contempt. See *In re Contempt of Rochlin*, 186 Mich App 639, 649 (1990), requiring that a person charged with contempt be informed whether the proceedings against him or her involve civil or criminal sanctions.
- ♦ Advise the respondent of the right to contest the charge at a contempt hearing. MCR 3.708(D)(2).
- ♦ Advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and if the court determines it might sentence the respondent to jail, that the court will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one. MCR 3.708(D)(3).
- ♦ If requested and appropriate, appoint a lawyer. MCR 3.708(D)(4).
- ♦ Schedule a hearing on the charges or take a guilty plea. MCR 3.708(D)(6).

7.9 Pretrial Procedures Where There Has Been No Arrest for an Alleged PPO Violation

Where there has been no arrest following an alleged PPO violation, the petitioner may seek enforcement by filing a motion to show cause in family division of circuit court. The motion must be supported by an affidavit.* MCR 3.708(B)(1). There is no fee for filing this motion. MCL 600.2529(1)(e) and MCR 3.708(B)(1).

Note: The PPO statutes and court rules do not specify where a petitioner should initiate show cause proceedings in cases where there has been no arrest for an alleged violation of a PPO. The broad jurisdictional provisions of MCL 764.15b(5), discussed above, are limited to situations where there has been a warrantless arrest for the alleged PPO violation. Because violation of a PPO is an offense against the issuing court, the Advisory Committee for this Resource Book suggests that as a general rule, show cause proceedings should be initiated in the issuing court. See *Cross Co v UAW Local No 155*, 377 Mich 202, 212 (1966). If, however, there are exigent circumstances that justify bringing the show cause proceeding elsewhere (e.g., the petitioner would be endangered by seeking enforcement in the issuing court), the Committee suggests that the court in the jurisdiction where the alleged violation occurred could entertain the show cause proceeding after consultation with the issuing court. See *Cross Co v UAW Local No 155*, *supra*, which approved transfer of contempt proceedings in the “sound discretion of the judge handling the original proceeding.” Besides safety, other factors the court might consider in exercising the discretion to transfer a contempt proceeding might include whether the issuing judge can fairly preside over the matter, whether the proceedings would be unduly

*See SCAO Form CC 382 for a standard motion, affidavit, and order to show cause for violating a PPO.

delayed by transfer or whether a judge is readily available in the issuing court.

If the petitioner's motion and affidavit establish a basis for a finding of contempt, MCR 3.708(B)(1) provides that the court shall either:

- “(a) order the respondent to appear at a specified time to answer the contempt charge; or
- “(b) issue a bench warrant for the arrest of the respondent.”

At the respondent's first appearance before the court in a show cause proceeding, the court must:

- ♦ Advise the respondent of the alleged violation. MCR 3.708(D)(1). This advice should inform the respondent of the possible penalties for criminal and/or civil contempt. See *In re Contempt of Rochlin*, 186 Mich App 639, 649 (1990), holding that a person charged with contempt has a due process right to be informed at the outset whether the proceedings involve criminal or civil contempt.
- ♦ Advise the respondent of the right to contest the charge at a contempt hearing. MCR 3.708(D)(2).
- ♦ Advise the respondent that he or she is entitled to a lawyer's assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one. MCR 3.708(D)(3).
- ♦ If requested and appropriate, appoint a lawyer. MCR 3.708(D)(4).
- ♦ Set a reasonable bond pending a hearing on the alleged violation, unless the court determines that release will not reasonably ensure the safety of the individuals named in the PPO. MCR 3.708(D)(5) and MCR 3.708(F)(1)(a). Under MCR 3.708(F)(1)(b), the court may impose a bond with conditions for the protection of a named individual in compliance with MCL 765.6b. A bond of this nature promotes safety by providing for the warrantless arrest of an individual who violates it.*
- ♦ Schedule a hearing on the charges or take a guilty plea. MCR 3.708(D)(6). If the court schedules a hearing on the alleged violation it must be held at the “earliest practicable time” after the respondent's first appearance in the show cause proceeding. MCR 3.708(F)(1).

*See Section 8.7 for more about bonds with conditions for the protection of named individuals.

7.10 Hearing on the Contempt Charges

The prosecuting attorney must prosecute criminal contempt proceedings upon an alleged violation of a PPO, regardless of whether the proceedings were commenced by warrantless arrest or motion to show cause. MCL 764.15b(7). This rule is subject to the following exceptions:

- ♦ The petitioner retains his or her own attorney.

- ♦ The prosecuting attorney determines that the PPO was not violated or that it would not be in the interest of justice to proceed with prosecution. *Id.*

The following procedures apply at the contempt proceeding:

- ♦ “There is no right to a jury trial.” MCR 3.708(H)(1).
- ♦ “The respondent has the right to be present at the hearing, to present evidence, and to examine and cross-examine witnesses.” MCR 3.708(H)(2).
- ♦ “The rules of evidence apply. . . .” MCR 3.708(H)(3).
- ♦ “At the conclusion of the hearing, the court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.” MCR 3.708(H)(4).

The respondent’s guilt of criminal contempt must be proven beyond a reasonable doubt. MCR 3.708(H)(3).

7.11 Comparing Personal Protection Orders with Domestic Relations Orders

Personal protection actions and domestic relations proceedings are designed to meet the needs of parties in distinct situations. The expedited issuance and enforcement procedures of a PPO action are tailored for situations — often emergencies — in which acts of domestic abuse threaten to interfere with personal liberty or cause a reasonable apprehension of violence. See MCL 600.2950(1)(j). Domestic relations proceedings generally anticipate non-violent situations in which the parties require court assistance to regulate child custody, support, or property matters pending entry of the final judgment in the case. To illustrate the distinction between them, this section compares the domestic relationship PPO under MCL 600.2950 with the domestic relations orders under MCR 3.207.

Note: See Section 7.12 for a discussion of PPOs and access to children.

A. Persons Subject to the Court’s Order

Ex parte or temporary orders issued under MCR 3.207 and domestic relationship PPOs issued under MCL 600.2950 apply to overlapping categories of persons. Ex parte or temporary orders are appropriately used in the domestic relations proceedings set forth in MCR 3.201(A):

- ♦ Actions for divorce, separate maintenance, or annulment of marriage;
- ♦ Actions for affirmation of marriage;
- ♦ Paternity actions;

- ♦ Actions for family support under MCL 552.451 et seq;
- ♦ Actions regarding the custody of minors under MCL 722.21 et seq;
- ♦ Actions regarding parenting time with minors under MCL 722.27b; and
- ♦ Proceedings that are ancillary or subsequent to the foregoing actions, relating to the custody of minors, parenting time with minors and support of minors and spouses or former spouses.

The parties to the above domestic relations actions will generally overlap with the parties to PPO actions because they typically fall into one of the following categories of persons who may be restrained under the domestic relationship PPO statute, MCL 600.2950:

- ♦ The petitioner's spouse or former spouse;
- ♦ A person with whom the petitioner has had a child in common;
- ♦ A person who resides or who has resided in the same household as the petitioner; or
- ♦ A person with whom the petitioner has or has had a dating relationship.

B. Conduct Subject to Regulation

*See also MCL 552.14 for a similar provision.

MCR 3.207(A) authorizes the court to issue “ex parte and temporary orders with regard to any matter within its jurisdiction” and “protective orders against domestic violence as provided in subchapter 3.700 [governing PPOs].”^{*} Although no Michigan appellate court has construed this language, it appears to direct the court to address “domestic violence” by way of a PPO — typically under MCL 600.2950 — and other domestic relations issues by way of an order under MCR 3.207.

*See Sections 1.2, 1.3, and 1.6 on the nature of “domestic violence,” and Section 1.5(B) on assessing lethality in cases involving domestic violence.

In deciding whether a case involves “domestic violence” that should be restrained by a PPO, it is helpful to keep two ideas in mind. First, the court should recall that “domestic violence” is more than an isolated instance of physical abuse within an intimate relationship — it involves a *pattern* of behavior perpetrated with the intent and effect of exercising control over an intimate partner. This pattern may involve physical, sexual, emotional, and/or financial abuse. It may also include non-criminal acts, which are nonetheless dangerous if committed in the context of other behavior that leads to a violent crime.^{*} Second, the court may find it helpful to consider that the purpose of a PPO is to prevent domestic violence crimes. See *United States v Dixon*, 509 US 688, 694 (1993), in which the U.S. Supreme Court characterized civil protection order proceedings as a court’s use of its contempt power to restrain criminal behavior.

The statutes governing domestic relations orders and domestic relationship PPOs illustrate the type of conduct that is regulated under each type of order. MCL 552.15(1) provides as follows:

“After the filing of a complaint in an action to annul a marriage or for a divorce or separate maintenance, on the motion of either party or the friend of the court, or on the court’s own motion, the court may enter orders concerning the care, custody, and support of the minor children of the parties during the pendency of the action as prescribed in section 5 of the support and parenting time enforcement act, MCL 552.605, and as the court the court considers proper and necessary. Subject to section 5b of the support and parenting time enforcement act, MCL 552.605b, the court may also order support as provided in this subsection for the parties’ children who are not minor children.”

A domestic relationship PPO is designed to restrain behavior that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence. MCL 600.2950(1)(j). See Section 7.2(B) for a list of specific conduct that a court may enjoin in a domestic relationship PPO.

C. Issuance of Order

Because PPOs are intended to protect petitioners from violent behavior in potentially urgent circumstances, the procedures for issuing them differ significantly from the procedures for issuing domestic relations orders under MCR 3.207. These differences are as follows:

- ♦ To protect petitioners who have fled from their places of residence to escape violence, a PPO with a respondent age 18 or over may be issued in any county in Michigan regardless of the parties’ residency. MCR 3.703(E)(1). * Orders issued under MCR 3.207 are subject to the residency restrictions of the underlying domestic relations action. See, e.g., MCL 552.9.
- ♦ There is no filing fee for a PPO petition and no summons is issued. MCR 3.703(A). Moreover, no filing fees are allowed for motions to rescind or modify a PPO or for motions to show cause to enforce a PPO. MCL 600.2529(1)(a), (e). Motions in domestic relations actions are subject to a \$20 motion fee. MCL 600.2529(1)(e). See also MCR 2.119(G). Motion fees in domestic relations actions can be waived under MCR 2.002.
- ♦ Under MCL 600.2950b, standardized PPO forms are available for use by pro se parties. Upon request, the court may provide assistance (but not legal assistance) to a party in completing the forms and may instruct the party regarding proper service of the order. Courts may also provide domestic violence advocates to assist petitioners in obtaining a PPO. MCL 600.2950c. There are no similar provisions for assistance to pro se parties applicable to proceedings under MCR 3.207.
- ♦ A PPO is filed as a separate action from any accompanying domestic relations action so that it will not be inadvertently terminated upon conclusion of the domestic relations action. MCR 3.703(A). Temporary domestic relations orders are vacated by entry of final judgment unless specifically continued or preserved. MCR 3.207(C)(6).

*See Section 7.4(A)(1) on venue requirements when the respondent is under age 18.

- ♦ The court must rule on a petition for an ex parte PPO within 24 hours of its filing. MCR 3.705(A)(1). There is no such restriction for orders issued under MCR 3.207.
- ♦ An ex parte PPO must be issued for a period of no less than 182 days. The restrained party may move to modify or rescind the PPO and request a hearing within 14 days of service or actual notice, unless good cause is shown for filing the motion after the 14 days have elapsed. MCL 600.2950(13). An ex parte order issued under MCR 3.207(B)(4) “remains in effect until modified or superseded by a temporary or final order.” The adverse party has 14 days from service of the order to file written objections; if no objection is filed, the ex parte order automatically becomes a temporary order. MCR 3.207(B)(6).
- ♦ An ex parte PPO is effective when signed by a judge and is immediately enforceable, without written or oral notice to the restrained party. MCL 600.2950(12). An order issued under MCR 3.207(B)(3) is “effective upon entry and enforceable upon service.”

D. Enforcement Proceedings

A comparison of the enforcement mechanisms for PPOs and domestic relations orders under MCR 3.207 further reveals the differences between these two types of proceedings. Violation of a PPO subjects the offender to warrantless arrest and criminal or civil contempt sanctions. Offenders age 17 or older found guilty of criminal contempt shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. MCL 600.2950(23). These penalties reflect the Legislature’s recognition that domestic violence is criminal behavior. On the other hand, the enforcement mechanisms for domestic relations orders under MCR 3.207 reflect the essentially civil nature of these proceedings. Although arrest and contempt proceedings are available to enforce a domestic relations order, the governing statutes also provide alternative, less coercive methods of enforcement, which allow for more flexibility in resolving disputes arising from these orders.

The different natures of the PPO and the domestic relations order are illustrated by the following enforcement features:

- ♦ A PPO is entered into the Law Enforcement Information Network (“LEIN”). MCL 600.2950(17). There is no provision for LEIN entry of domestic relations orders issued under MCR 3.207.
- ♦ A party who is in violation of a PPO is subject to warrantless arrest pursuant to MCL 764.15b. In cases where the party in violation has not received notice of the PPO, MCL 600.2950(22) authorizes law enforcement officers to give the party verbal notice and an opportunity to comply with the PPO — failure to immediately comply is grounds for immediate custodial arrest. There is no provision authorizing warrantless arrest for violation of an order issued under MCR 3.207. However, the Friend of the Court may petition for an order of arrest at any time if immediate action is necessary to enforce a domestic relations order or judgment concerning support, parenting time, or custody. MCR 3.208(B)(6).

- ♦ Violation of a PPO is punishable by criminal or civil contempt sanctions. MCL 600.2950(23), (26). The prosecutor is responsible to prosecute criminal contempt proceedings unless the petitioner retains his or her own attorney for that purpose. MCL 764.15b(7). For orders issued under MCR 3.207, the Friend of the Court is responsible to initiate enforcement proceedings. MCR 3.208(B). The Friend of the Court may petition for an order to show cause why a party should not be held in contempt, but contempt sanctions are not the only remedy. See, e.g., MCL 552.511, which sets forth alternative remedies for custody or parenting time violations, and MCL 552.607, regarding arrearages on orders of support.

If a dispute arises over a PPO issued in the context of a domestic relations case, some commentators suggest that the court handle resolution of the dispute with the criminal nature of the PPO in mind. Typically, domestic relations proceedings of a civil nature call for negotiated settlements of private disputes involving property distribution or child custody. To the extent that PPO proceedings address criminal conduct, however, they should not be a subject for negotiation or settlement between the victim and the perpetrator. Finn and Colson, *Civil Protection Orders: Legislation, Current Court Practice, and Enforcement*, p 4 (Nat'l Inst of Justice, 1990). See also Chapter 6 on the use of mediation in cases involving domestic violence.

7.12 PPOs and Access to Children

Because abusers often use the exercise of their parental rights as an opportunity for asserting control over their intimate partners, there is a strong link between safety and the abuser's access to children. This link is recognized in MCR 3.207(A), which states that a circuit court in a domestic relations case may issue *both* "ex parte and temporary orders with regard to any matter within its jurisdiction" *and* "[personal protection] orders against domestic violence." This court rule anticipates that issues in cases where domestic violence is present can generally be handled most safely and effectively if the same judge presides over all the proceedings between the same parties. See also MCR 3.703(D)(1)(a), under which a PPO filed in the same court as another action between the parties must be assigned to the same judge who heard the prior action. In *Brandt v Brandt*, 250 Mich App 68, 71-72 (2002), a PPO and subsequent divorce proceeding were assigned to the same judge. The Court of Appeals approved of this procedure, stating that it "allows the judge to be intimately familiar with all the proceedings involving the parties." 250 Mich App at 72. The Court of Appeals also recommended issuing duplicate orders in concurrent domestic relations and PPO proceedings and placing a copy of such orders in each case file. *Id.*

*In divorce actions, for example, either party must have resided in Michigan for at least 180 days and in the county of filing for at least 10 days before filing. MCL 552.9(1).

*In some cases, the court issuing the PPO may seek to avoid potential conflicts by making the PPO subject to an order issued in a domestic relations case.

Unfortunately, it is not always possible for one court to meet all the needs presented in a case involving domestic violence, in part because abused individuals often flee their homes seeking refuge. If flight occurs before a domestic relations action is initiated, it may be difficult to obtain complete relief from the domestic relations court in the refuge county until the applicable residency requirements are met.* If flight occurs after a domestic relations action has been initiated, fear of the abuser may prevent the abused individual from seeking relief in the court where the action is pending.

To protect individuals in flight from abuse, MCR 3.703(E)(1) permits petitioners to file PPO actions in any county in Michigan if the respondent is age 18 or older. While this venue provision provides needed protection for some persons affected by domestic violence, it also gives rise to the possibility of concurrent PPO and domestic relations proceedings in different courts. Concurrent proceedings in separate courts can be problematic:

- ♦ When there are concurrent proceedings in separate courts, there is a risk of conflicting orders. Conflicting orders are difficult for police to enforce and are easily manipulated by abusers.
- ♦ PPOs can affect the parties' exercise of parental rights, particularly when they contain no-contact provisions or provisions restricting entry onto premises. While such provisions protect people from harm under emergency circumstances, the expedient issuance and enforcement procedures that promote safety in a PPO action do not offer the best context in which to make the informed factual findings that must accompany a determination of a child's best interest in a custody or parenting time proceeding.

Michigan statutes and court rules contain several provisions that are designed to aid in the coordination of concurrent proceedings in domestic relations and personal protection actions. To address potential conflicts between jurisdictions, MCR 3.706(C)(3) governs the precedence of orders. It provides that a PPO takes precedence over any existing custody or parenting time order until the PPO has expired, or until the court having jurisdiction over the custody or parenting time order modifies the order to accommodate the conditions of the PPO.* If a party to the PPO wants the existing custody or parenting time order modified, he or she must file a motion with the court having jurisdiction of the custody or parenting time order and request a hearing.

Communication between courts in concurrent domestic relations and PPO actions is key to avoiding conflicting orders. Thus, the clerk of the court that issues a PPO is required to immediately send notice of the PPO's issuance to the Friend of the Court in the following circumstance:

"If the respondent [in a personal protection action] is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, [the clerk shall] notify the friend of the court for the county in which the information is located about the existence of the personal protection order." MCL 600.2950(15)(f), 600.2950a(12)(f).

The foregoing provision only requires the court clerk to notify the Friend of the Court of the PPO's issuance, not of its modification, extension, or termination. Moreover, the statute does not indicate how the clerk is to discover whether the respondent has access to information in Friend of the Court records, or where these records might be located. In light of these difficulties, the Advisory Committee for this resource book advises Friend of the Court personnel to check for changes to the status of a PPO before taking any action in reliance on it. The Committee also suggests that court personnel ask the parties about the existence or status of PPOs each time the parties encounter the court system.

Other communication requirements in the Michigan Court Rules are as follows:

- ♦ If there is any pending action between the parties or any prior judgment or order entered in a court other than the court in the PPO action, MCR 3.703(D)(1)(b) provides that where practicable, the court in the PPO action should contact the prior court to determine any relevant information.
- ♦ If the prior action addressed a child custody or parenting time matter, MCR 3.706(C)(1) requires the court in the PPO action to contact the prior court as provided in MCR 3.205. MCR 3.706(C)(1) further directs that where practicable, the judge in the PPO action should not issue an order without first consulting with the prior judge regarding the impact of the PPO on custody or parenting time rights.

After considering orders issued by a separate domestic relations court, the court in a PPO action may deviate from domestic relations orders that compromise the safety of the petitioner and minor children. MCR 3.706(C)(2) provides:

“If the respondent’s custody or parenting time rights will be adversely affected by the personal protection order, the issuing court shall determine whether conditions should be specified in the order which would accommodate the respondent’s rights or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions.”

Domestic relations courts can avoid the potential for conflicts between PPOs and domestic relations orders by taking care that orders for custody, parenting time, and support adequately provide for safety in cases involving domestic violence. See Sections 4.5–4.6 on issuing safe orders for joint custody and parenting time. Section 4.12 addresses safe orders in cases that present a risk of parental abduction or flight. Support orders are the subject of Chapter 5.

Because a PPO takes precedence over an existing custody or parenting time order until the PPO expires or the custody or parenting time order is modified to accommodate the PPO, Friend of the Court personnel should abide by the conditions of the PPO in handling a concurrent domestic relations case. To promote safety, particular attention should be paid to PPO provisions that restrict contact between the parties that exclude one of the parties from premises occupied by the other or that prevent a party from having access to

information in the records of a child. The *Michigan Parenting Time Guideline* states:

“If the parties have a Personal Protection Order, parenting time exchanges shall occur (if permitted by the order) in a manner which ensures the order is not violated. In order to provide appropriate safety when a PPO is in place or when a documented history of abuse exists, all exchanges should occur in a public place, at a designated neutral exchange site, by a third party, or at a supervised parenting time facility.” *Michigan Parenting Time Guideline*, p 26 (State Court Administrative Office, 2000).

7.13 PPOs and the Established Custodial Environment

Because a PPO may affect the parties’ access to children — particularly if it excludes a parent from premises — it may as a practical matter grant custody to one parent. This reality is likely to have significant implications for any future domestic relations proceedings between the parties because it creates a situation that could potentially ripen into an established custodial environment. See *Blaskowski v Blaskowski*, 115 Mich App 1, 7 (1982).

Generally, once an established custodial environment exists, a court may not modify an existing custody or parenting time order to change it unless the party seeking the change shows clear and convincing evidence that it is in the child’s best interests. MCL 722.27(1)(c).^{*} The Michigan Supreme Court has held that this restriction serves a legislative policy “to minimize the prospect of unwarranted and disruptive change of custody orders and to erect a barrier against removal of a child from an established custodial environment except in the most compelling cases.” *Baker v Baker*, 411 Mich 567, 577 (1981). However, a court may change custody or parenting time in the provisions of a PPO without considering the best interest factors outlined in MCL 722.27(1)(c). See *Brandt v Brandt*, 250 Mich App 68 (2002), discussed in Section 7.2.

A PPO’s potential effect on access to children makes it tempting for some parties to use it to gain an advantage in domestic relations proceedings. To avoid such manipulations, a court should carefully consider petitions that would interfere with the respondent’s parental rights, keeping in mind that domestic relations proceedings are better suited for resolving disputes over access to children. If the PPO court finds that interference with the respondent’s parental rights is necessary to protect the petitioner, however, a domestic relations court may subsequently find itself deciding the effect of the PPO on the child’s custodial environment in a proceeding to modify custody.

MCL 722.27(1)(c) defines the “established custodial environment” as follows:

“The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment,

^{*}See Section 4.9 on modifying Michigan custody orders.

and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.”

The question whether an established custodial environment exists is one of fact for the trial court to resolve based on the foregoing statutory criteria. *Hayes v Hayes*, 209 Mich App 385, 387–388 (1995). The statutory criteria do not allow a court to consider how the custodial environment came into being. Instead, the focus is on the circumstances surrounding the care of the children in the time preceding the court’s determination in a particular case. 209 Mich App at 388. In *Blaskowski v Blaskowski*, *supra*, 115 Mich App at 6, the Court of Appeals explained:

“If the trial court determines that an established custodial environment in fact exists, it makes no difference whether that environment was created by a court order, whether temporary or permanent, or without a court order, or in violation of a court order, or by a court order which was subsequently reversed.”

Application of the foregoing principles is illustrated by *Baker v Baker*, *supra*. In this case, the Michigan Supreme Court held that two temporary custody orders did not, of themselves, create an established custodial environment. Instead, such an environment depended upon

“a custodial relationship of a significant duration in which [the child] was provided the parental care, discipline, love, guidance and attention appropriate to his age and individual needs; an environment in both the physical and psychological sense in which the relationship between the custodian and the child is marked by qualities of security, stability and permanence.” 411 Mich at 579–580.

Applying this standard, the Court concluded that a child’s established custodial environment had been destroyed in a case where he experienced repeated custodial changes and geographical moves after the breakup of his parents’ marriage. Long-term community contacts in the father’s location were not sufficient to preserve his father’s home as an established custodial environment where there was “no ‘appreciable time [during which] the child naturally look[ed]’ to his father *alone* ‘for guidance, discipline, the necessities of life and parental comfort’ in a stable, settled atmosphere” *Id.* at 582. [Emphasis in original.]

See also *Pluta v Pluta*, 165 Mich App 55, 60 (1987) (“[A]n order for temporary custody does not, by itself, establish a custodial environment. The trial court must look at the total custodial relationship”) and *Hayes*, *supra*, 209 Mich App at 388 (“Where there are repeated changes in physical custody and there is uncertainty created by an upcoming custody trial, a previously established custodial environment is destroyed and the establishment of a new one is precluded”). For further cases addressing the effect of temporary custody orders on the established custodial environment, see *Michigan Family Law Benchbook*, §3.3 (Institute for Continuing Legal Education, 1999).

